

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KENNETH N.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2007040472

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California, on May 21, 2007.

Vince Toms, Consumer Services Representative, represented the service agency Inland Regional Center.

Lauren Dang, mother of the claimant, represented the claimant Kenneth N.

The matter was submitted on May 21, 2007.

ISSUE

Should the service agency be required to fund the enrollment of the claimant in the Kindercare five half-day program for the summer of 2007?

FACTUAL FINDINGS

1. Claimant, Kenneth N. (the claimant) is a three and one-half year-old boy who receives services from the Inland Regional Center (the service agency). The claimant has a diagnosis of autistic disorder and mild mental retardation and receives services from the service agency on that basis. The claimant's birthday is September 5, 2003. He lives at

home with his mother, younger brother, and grandmother and attends school in his local school district.

2. The claimant was identified as needing early intervention services when he was two years old. He attended Kindercare when he was two years old as an early infant stimulation program funded by the regional center through the federally funded Early Start Program. He has since transitioned into receiving regional center services under the Lanterman Act. Currently, the claimant receives 24 hours of respite services per month.

3. Kenneth is described as suffering from a mild form of autism. He does not have any speech yet and does not initiate interaction or interact well with other children. Kenneth is also not yet toilet trained, but he cooperates with toileting when he is at school. Kenneth attends school at the Chino Valley Unified School District (the District). He has been placed in a classroom with other developmentally disabled children, but his teacher has suggested that Kenneth be placed in a different classroom setting next year. Kenneth is doing very well in school. He seems to thrive with the structure in school, cooperating well with the teachers and able to engage in the appropriate school activities. The plan for next year is to place Kenneth in a class where the other children have speech delays only as opposed to multiple developmental delays.

4. Kenneth's school is on a regular school schedule with school in recess for the entire summer. As a result, the claimant's mother would like Kenneth to attend Kindercare for the summer. In April 2007, the claimant's mother requested that the regional center fund the Kindercare program for June, July, and August 2007. The claimant's mother wants him to have the opportunity to continue to socialize with other children over the summer and work on acquiring speech and toileting skills. She is fearful that if Kenneth is home for the entire summer his behaviors will regress. Kenneth tends to want to do whatever his 20-month-old brother does. If his brother is drinking from a bottle, wearing a diaper, and not using speech, then Kenneth wants to engage in those behaviors, too. The claimant's mother believes the program at Kindercare would enable Kenneth to be around other children during the summer and hopefully, prevent his regression.

5. The Kindercare program is a daycare center. It is not a program specifically designed for developmentally disabled children. The center typically has about 90 children enrolled in the summer, but the center is broken into age appropriate groups. Kenneth would be placed in a group of about 12 four and five year olds with one teacher and one aide. The Kindercare summer program meets five days a week for half-days and costs \$491.00. There would be no additional fee charged for any extra services for Kenneth's developmental disability since there are no such services provided.

6. The claimant seeks to have the regional center pay for the cost of the Kindercare summer program. The service agency has denied this request. It determined that the requested program is simply a daycare program that is the parent's responsibility to pay for. Even if this program is viewed as social recreation that type of activity should be provided by the child's family. Also, the family needs to pursue all possible programs that the District could provide over the summer. The claimant's mother inquired of Kenneth's

teacher, but there has been no formal request made of the District to have it fund a summer program for Kenneth. The regional center is available to assist the claimant with pursuing this request through the IEP process. These would all be generic resources that the service agency is required to look to first before providing the service itself.

7. In addition, there was evidence presented that established that Kenneth could benefit from time at home with one-on-one care from his mother as opposed to the six to one teacher ratio provided at day care. That is not to say that the summer daycare program would not be fun for Kenneth. Such a program can certainly provide a setting for social modeling and interaction for Kenneth, as it would for any child. The daycare program is the same type of program any family might enroll their child in for the purpose of daycare and social interaction and recreation.

8. The service agency agrees that the claimant might benefit from some level of social recreation, but he is still just a three-year-old little boy. However, the regional center has offered the claimant information about the Chino Hills Recreation summer program. This is offered by the City of Chino Hills and is a generic resource available to the claimant at a reduced cost. The claimant's mother does not believe the classes offered through Chino Hills are consistent enough to meet Kenneth's needs and she also is concerned that the classes can be cancelled if there is not enough enrollment. However, these potential problems could exist with any program and are only possibilities. They are not sufficient reasons to reject this viable alternative outright. If the claimant's family chooses not to avail themselves of this alternative at this time, that is their choice, but this does not shift the burden to the regional center.

9. In addition, the claimant's mother does not work outside of the home. She stays home full-time with Kenneth and his younger brother. She also lives with her mother so the claimant's grandmother is available to help with babysitting. Therefore, the claimant's mother is able to take Kenneth on social outings such as to the park to interact with other children or she could arrange play dates for him at home.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512 provides:

“As used in this part:

“(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, or towards the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of

the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . ."

2. Welfare and Institutions Code section 4648 provides in pertinent part:

"(a)(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan."

Title 17, California Code of Regulations, section 54326, subdivision (d) further provides that:

"Regional centers shall not: (1) Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar service needs to a minor child without disabilities."

3. Welfare and Institutions Code section 4685, subdivision (c)(6) provides that:

"When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care services that exceeds the cost of providing day care services to a child without disabilities."

The regional center properly determined that Kindercare is a day care program and as such the regional center appropriately declined to fund this program, as set forth in Findings 2-8.

4. The regional center must monitor the cost-effectiveness of the use of public resources. (Welf. & Inst. Code §§ 4501 and 4646.) Regional centers are required to identify and pursue generic resources for regional center consumers and are prohibited from spending regional center funds for generic services such as day care or school services. (Welf. & Inst. Code §§ 4644(b), 4648(a)(2), 4651(a), and 4659(a).) Whenever possible, the regional center is mandated to look to generic resources that can meet the needs of the claimant and the regional center has properly done that in this case, as set forth in Findings 2-8. The regional center is, therefore, not required to fund the Kindercare summer day care program for the claimant, as set forth in Findings 1-8.

ORDER

The claimant's appeal seeking funding from the service agency for the Kindercare program for the summer of 2007 is hereby denied.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: _____

GREER D. KNOFF
Administrative Law Judge
Office of Administrative Hearings